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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION ONE

CRAIG ROBERSON et al.,

Plaintiffs and Respondents,

v.

JOE V. BAEZA et al.,

Defendants and Appellants.

B173971

(Los Angeles County
Super. Ct. No. VC036443)

APPEAL from an order of the Superior Court of Los Angeles County,
C. Robert Simpson, Jr., Judge. Dismissed.

Coulter, Vernoff & Pearson and Wallace R. Vernoff for Defendants and
Appellants.

Law Offices of Michael Leight, Michael Leight and Jeffrey Cunningham for
Plaintiffs and Respondents.

The trial court found that a statutory offer to settle (Code Civ. Proc., § 998)¹ was a nullity and refused to award certain costs to the defendants who had made the offer, notwithstanding that the plaintiffs recovered less than the amount of the offer. The trial court thereafter granted the plaintiffs' motion for a new trial on the issue of damages. Since the only issue raised on this appeal is a challenge to the ruling on costs, the appeal is (at best) premature. We dismiss the appeal.

FACTS

In February 2002, Craig Roberson and Debbie Roberson sued Joe V. Baeza and Jesse Baeza for damages of "no less than" \$128,000 arising out of work done on the Robersons' property, alleging claims for breach of contract, negligence, breach of warranty, and fraud. The Baezas answered, and they later "collectively" served a joint offer to compromise with both plaintiffs for \$9,000. (§ 998.) The Robersons did not accept the offer.

In July 2003, the case was tried to a jury, which rendered special verdicts in favor of the Robersons and against both Joe and Jesse Baeza, and assessed damages in the sum of \$4,379 payable by Joe Baeza, and "\$-0-" payable by Jesse Baeza.

In August, the Baezas filed a motion for an order directing the Robersons to pay their costs, including expert fees, on the ground that the verdict in favor of the Robersons was for an amount less than the amount of the section 998

¹ All section references are to the Code of Civil Procedure.

offer. The trial court found that the Robersons were the prevailing parties as to Joe Baeza, and that Jesse Baeza was the prevailing party as to the Robersons "because the jury awarded no damages to [the Robersons] against Jesse [Baeza]," but found the Baezas' section 998 offer was a nullity because the \$9,000 was not allocated between the Robersons. The judgment on the jury's verdict was entered on January 26, 2004.

On February 10, the Robersons filed a notice of their intent to move for a new trial on the issue of damages only, and that motion was granted on March 30. In the interim, on March 8, the Baezas had filed a notice of appeal from the judgment.

DISCUSSION

The Baezas challenge the trial court's ruling on their motion for costs, claiming it was a valid offer under the terms of section 998.² As the Robersons point out, the order granting a new trial on the issue of damages moots this appeal. In reply, the Baezas contend the appeal is not moot "because the jury found that Jesse Baeza was not liable for any damages. . . ." The Baezas miss the point.

The jury found both Joe and Jesse Baeza were liable to the Robersons, and only the award of damages was limited to Joe Baeza. The trial court granted the motion for a new trial as to both Joe and Jesse Baeza, leaving the

² The Baezas do not challenge the jury's finding that they are liable to the Robersons, and that finding will be binding at the new trial.

liability finding in place as to both of them, and leaving it to a new jury to determine the amount of damages to be paid to the Robersons. Since the Robersons may recover more than the Baeza's \$9,000 settlement offer, this appeal is premature and, possibly, moot. (*Vernon v. State* (2004) 116 Cal.App.4th 114, 120-121.)

DISPOSITION

The appeal is dismissed. The Robersons are entitled to their costs of appeal.

NOT TO BE PUBLISHED.

VOGEL, J.

We concur:

MALLANO, Acting P.J.

SUZUKAWA, J.*

*Judge of the Los Angeles Superior Court, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.